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parties interested lead on to an indefinite extension of the doctrine, and the danger lies in the lack of a fixed limit. This is shown in cases where the courts have considered it their duty to complete unfinished roads. *Miltenberger v. Logansport Ry. Co.*, 106 U. S. 286. The action of the lower court in the principal case is the most extreme instance of this danger. It is conceded that the bondholders have a right to be notified so that they may appear and argue against the issue of the certificates. But that precaution helps little if the test is to be not their interest but that of the public. It is claimed that in extending credit to the railroad they have taken the risk of the issue of certificates with the consequent postponement of their liens. But it is unjust to force them to take the chance of arbitrary action. The question before the court in each case should be not a balancing of benefits to see whether the gains will be greater than the losses to all concerned treating all on an equal footing, but whether the probable protection of the bondholders and the benefit to the other interested parties and to the public require and justify interference with vested rights otherwise sacred.

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DISTRIBUTION BETWEEN LIFE-TENANT AND REMAINDERMAN. — A difficult question as to distribution arises, if, when shares of a corporation are held in trust for a life-tenant and remainderman, the corporation instead of declaring dividends lays its earnings by in the form of a surplus. In a recent Mississippi case, bank shares were sold by a trustee at a price enhanced by the existence of a large surplus accumulated from profits earned subsequently to the creation of the trust. The court gave the life-tenant the increase in price due to such surplus. *Simpson v. Millsaps*, 31 So. Rep. 912.

In the cases hitherto decided the fund for distribution had generally been received by the trustee in the form of a cash bonus or a stock dividend; but an adoption of any of the theories advanced in those cases will settle the question, no matter in what form the fund may have come to the trustee. There may be said to be three views as to distribution. (1) The so-called "Massachusetts" view treats cash dividends as "income," regardless of when the earnings were made, provided the declaration of the dividend comes during the life tenancy; stock dividends it regards as "corpus" to which the remainderman is consequently entitled. *Minot v. Paine*, 99 Mass. 101; *In re Barton's Trust*, L. R. 5 Eq. 238; *Gibbons v. Mahon*, 136 U. S. 549. An exception to the first part of this rule is made when it appears that the cash dividend resulted from other sources than actual earnings; such a dividend goes to the remainderman. *Heard v. Eldrige*, 109 Mass. 258. (2) The New York and Kentucky view gives to the life-tenant all dividends, whether stock or cash, issuing from earnings, whenever such earnings may have accrued, provided the declaration is made during his term. *Riggs v. Cragg*, 26 Hun (N. Y.) 89. See also *Hite v. Hite*, 93 Ky. 257. (3) The Pennsylvania rule considers earnings made during the tenant's term, and only those, as "income," the form and time of the declaration of the dividend being of no consequence. *Earp's Appeal*, 28 Pa. St. 368; *Van Norden v. Alden*, 19 N. J. Eq. 176. Before attempting to select from these various views it should be noted that since the problem arises out of the words used in a trust instrument, it is primarily one of construction. No hard and fast rule can be laid down that under all circumstances "corpus" or "income" shall have the same meaning. In

every case it is the intention of the creator of the trust which must be sought.

Where, however, the instrument in the light of all the facts is ambiguous on this point, some rule must be adopted. The Massachusetts rule, in allowing the form of corporate action to determine the respective portions of the life-tenant and the remainderman, seems arbitrary. It is a rule easy of application, however; and this is a strong recommendation, since trustees should have a ready guide for their conduct. An objection is found, on the other hand, in the injustice which would result to the life-tenant in case the corporation pursued a policy of declaring stock dividends only. The New York and Kentucky rule avoids the last objection, but in doing so becomes more complicated and difficult of application, since it involves an investigation as to the sources of stock dividends. In their modification of the Massachusetts view, moreover, these courts seem to recognize that the earnings of the corporation are the "income" to which the life-tenant is entitled; but they do not go to the logical conclusion to which this theory would lead, and give the life-tenant only those earnings accruing during his term. This step is taken by the Pennsylvania court, and by so doing it seems to go to the substance of the matter, reaching thereby a position which it can maintain consistently. A just criticism of this rule, however, is that it is often very difficult to apply, since the investigations it involves would often be arduous and fruitless.

The court in the principal case did not base its decision on any of the foregoing rules, but found from the facts evidence of the testator's intention to treat the earnings of the corporation as the "income." Since it was agreed that the increase in price received for the shares was directly traceable to such earnings, this amount was given to the life tenant. In a *dictum* the court favored the Pennsylvania rule which would have brought about the same result. The general confusion in which this question is involved would to a great extent have been avoided had the judges always differentiated cases of ambiguity from those in which the intention of the testator is discoverable. Where, however, the latter guide does not exist, the rule laid down by the Pennsylvania court would seem preferable.

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RESTRICTIONS ON THE FREEDOM OF THE PRESS. — The Constitution of the State of New York provides that "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press" (art. 1, § 8). John Most, the anarchist, was convicted under section 675 of the Penal Code, providing that "a person who willfully and wrongfully commits any act which seriously . . . endangers the public peace . . . is guilty of a misdemeanor." The act complained of was the publication of an article advocating wholesale murder of all officers of the government, and suggesting poison and dynamite as the proper means. The defendant's appeal from conviction on the ground that the section of the Code in its application to his case was unconstitutional, was dismissed. *People v. Most*, 171 N. Y. 423. Taken literally, the words of the Constitution could bear the interpretation desired by the defendant, the logical but absurd result of which would be that the legislature could not forbid the use of any sort of written language, no matter how pernicious. The correctness of the decision cannot be questioned.